

WHO HOLDS THE DEFAULT?

Article 88b and the limits of the Digital Omnibus

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Summary

- **The Digital Omnibus makes Europe's digital rulebook more coherent, but not much lighter.** Most of its measures change where and how firms comply but leave the underlying obligations largely in place. Only its AI strand has been adopted; the rest is still being negotiated. EPICENTER's EU Regulatory Observatory scored it 6.55 out of 10, where 5 means no change: liberal in direction, modest in ambition.
- **Savings are counted before they are made.** The Commission counts estimated savings from proposals not yet adopted towards its target. Its headline saving for the cookie reform, more than €800 million a year and most of the file's total, covers administrative costs only, not the effect on advertising revenue.
- **The AI Act delay points to a design problem.** The Digital Omnibus on AI, now law, postponed the high-risk obligations because the standards and national authorities needed for compliance were not ready. The original deadlines did not depend on those conditions being met, and the new ones do not either.
- **Browser-level consent, as the Commission proposed it, risks adding costs under a simplification label.** Proposed Article 88b sets no default and leaves the choice of default to browser settings and future standards. A Google-commissioned study estimates that if consent falls as far as it did under Apple's opt-in prompt, 30–35% of European advertiser revenue could be at risk under its modelled scenario; independent evidence points the same way. The heaviest losses would likely fall on smaller businesses and websites outside the media exemption, while platforms able to secure consent from logged-in users could gain ground.

- **The file is still open and can be improved.** The Council's negotiating mandate, agreed on 21 October 2026, keeps proposed Article 88b deleted and cuts the wait before a refused consent request may be repeated to four months; campaigners are pressing for the browser signal's return in Parliament, which will not settle its position before 2027. The co-legislators should standardise the consent interface without presuming a choice, widen exemptions for low-risk processing, require a distributional impact assessment before reinstating proposed Article 88b in any form, count savings only once they are adopted and verified, and test feasibility before setting deadlines.

Introduction

The European Commission's Digital Omnibus, published on 19 November 2025, is presented as a simplification package intended to reduce compliance costs across the EU's digital rulebook: incident reporting is consolidated across several instruments, cookie rules are folded into the General Data Protection Regulation (GDPR), and the AI Act's implementation timeline has been adjusted (European Commission 2025a). The ambition is a reasonable one. The digital acquis has grown into a dense and overlapping body of law, and business organisations such as Eurochambres report that its compliance burden falls hardest on the firms least able to bear it (Eurochambres 2026).

The file also carries weight beyond its contents. It is the first substantial legislative test, in the digital field, of the simplification agenda this Commission has made central to its mandate. The Competitiveness Compass commits the Commission to reducing burdens by at least 25% for all companies and at least 35% for small and medium-sized enterprises (SMEs), following the analysis of regulatory burden in the Draghi report (Draghi 2024; European Commission 2025b). The Compass estimates this reduction at around €37.5 billion in recurring costs by the end of the mandate, now presented as savings 'by 2029'.[1] The 2026 State of the Union raised the stakes further. The president of the Commission reported that the twelve omnibus proposals are 'reducing the administrative burden by around €17 billion a year' and called for 'a pact against gold-plating', that is, against national rules that go beyond what EU law requires (European Commission 2026a). Meanwhile, the accompanying letter of intent commits the Commission to 'a simplicity-by-design approach for all new proposals' (European Commission 2026b). Those commitments will only be meaningful if 'simplification' is held to a

1 'Simpler rules for a stronger economy', European Commission, page last updated 24 June 2026 (https://commission.europa.eu/topics/competitiveness/simplification_en).

consistent definition, and that definition will be shaped largely by precedent. The Digital Omnibus is the first significant precedent. If relocating obligations between legal instruments counts towards the target, the target is likely to be met on paper while remaining unmet in firms' accounts. The standard established here will also travel: the Digital Fairness Act, which the president confirmed will be proposed this autumn, will be judged against the same simplification commitments, and therefore against whatever this file allows the word to mean.

Since publication, the package has split into two tracks. The Digital Omnibus on AI received the Council's final approval on 29 June 2026, was signed by the European Parliament and the Council on 8 July 2026 as Regulation (EU) 2026/1744, and has been in force since 27 July 2026 (European Union 2026). The broader Digital Omnibus Regulation (procedure 2025/0360(COD)) remains under negotiation. In Parliament, the file is handled jointly by the Committee on Industry, Research and Energy (ITRE) and the Committee on Civil Liberties, Justice and Home Affairs (LIBE), with Members of the European Parliament (MEPs) Aura Salla and Marina Kaljurand serving as co-rapporteurs (Legislative Observatory 2025). More than 1,800 amendments were tabled by the 15 July 2026 deadline, and a negotiating position is not expected before February 2027.[2] In the Council of the EU, member states negotiate under a presidency that rotates every six months. The Cyprus Presidency had hoped to obtain a mandate at the ambassadors' meeting on 26 June 2026, but withdrew the file from the agenda when it became clear that member states were not yet in agreement; a European source told Agence Europe that 'further technical work' was needed to reach agreement among member states.[3] The Irish Presidency has since tabled revised compromise texts, dated 3 and 21

2 'Digital Omnibus: Marina Kaljurand to keep definition of personal data intact, impact assessment in European Parliament in autumn', Bulletin No. 13909, Agence Europe, 15 July 2026 (https://agenceurope.eu/en/bulletin/article/13909/19/digital-omnibus-marina-kaljurand-to-keep-definition-of-personal-data-intact-impact-assessment-in-european-parliament-in-autumn); 'GDPR reform alive again? July update', M. Barczentewicz, 30 July 2026 (https://barczentewicz.com/post/gdpr-reform-alive-again-july-update/); 'EU lawmakers' digital simplification amendments show divide over privacy', MLex, 28 August 2026 (https://www.mlex.com/mlex/amp/articles/2517862).

3 'Cyprus Presidency of EU Council hands Digital Omnibus over to Ireland for lack of agreement between member states', Bulletin No. 13897, Agence Europe, 27 June 2026 (https://agenceurope.eu/en/bulletin/article/13897/15/cyprus-presidency-of-eu-council-hands-digital-omnibus-over-to-ireland-for-lack-of-agreement-between-member-states); 'Digital Omnibus negotiations (GDPR): July 2026 update', Privacy Next, July 2026 (https://www.privacynext.eu/resources/digital-omnibus-negotiations-gdpr-july-2026-update/).

September 2026; at that stage these were Presidency proposals rather than an agreed Council position (Council of the European Union 2026a, 2026b). According to Agence Europe, the Presidency's objective is 'to reach an agreement between the EU Council and the European Parliament on this file by the end of the year',[4] an ambition that matches the European Council's call, in March 2026, for all pending omnibus packages to be agreed by the end of 2026, but one which looks optimistic given that the Parliament's committee vote is not planned until early 2027.[5] On 2 October 2026, the Presidency put a further revised text to member states' ambassadors with a request for a negotiating mandate; on 7 October 2026, they only discussed it and postponed the vote to 11 October, after Germany and France sought stronger protection for trade secrets under the Data Act, and Germany tabled a working document calling for further GDPR easing, including the introduction of a 'low-risk data controllers' category, which would exempt small firms and non-profits from many obligations (Council of the European Union 2026c). On 21 October 2026, the ambassadors agreed the Council's negotiating mandate (Council of the European Union 2026f). It keeps proposed Article 88b deleted, cuts the period during which a refused request may not be repeated to four months, and replaces the Commission's single EU-level entry point for incident reporting with national entry points supported by an EU-level information point (Council of the European Union 2026f: Annex, recitals

4 'Pseudonymised data, cookies… Irish Presidency of EU Council sets out compromise options on Digital Omnibus', Bulletin No. 13933, Agence Europe, 9 September 2026 (https://agenceurope.eu/en/bulletin/article/13933/12/pseudonymised-data-cookies-irish-presidency-of-eu-council-sets-out-compromise-options-on-digital-omnibus); 'Irish Presidency of EU Council clarifies safeguards on pseudonymised data and consent exemptions for cookies', Bulletin No. 13943, Agence Europe, 23 September 2026 (https://agenceurope.eu/en/bulletin/article/13943/11/irish-presidency-of-eu-council-clarifies-safeguards-on-pseudonymised-data-and-consent-exemptions-for-cookies); the objective is attributed to the Irish Presidency's programme in 'Cyprus Presidency of EU Council hands Digital Omnibus over to Ireland for lack of agreement between member states', Agence Europe, Bulletin No. 13897, 27 June 2026.

5 'Members of the European Parliament to debate Digital Omnibus package in committee on Monday', Agence Europe, Bulletin No. 13907, 11 July 2026 (https://agenceurope.eu/en/bulletin/article/13907/15/members-of-the-european-parliament-to-debate-digital-omnibus-package-in-committee-on-monday); for the European Council's deadline, see Council of the European Union (2026c: point 6), citing the European Council conclusions of 19 March 2026.

49 to 50c).[6] This timing matters for the analysis. The present stage of the legislative cycle, with the Council's position fixed and Parliament's still open, is the one at which substantive amendments remain realistically possible; once trilogue negotiations, the closed-door talks between the Parliament, Council, and Commission, begin, changes tend to occur at the margins. Prolonged uncertainty is itself a compliance cost, since firms are planning on the basis of draft law across data protection, cybersecurity, and AI. However, the appropriate response to that cost is unlikely to be the rapid adoption of a flawed text. The window for improving the file is open now and will narrow considerably by spring.

This briefing assesses the package against a single test: does it reduce the compliance costs firms actually bear, or does it relocate them? It first examines what the Commission counts as savings, and then makes three propositions. First, that the package's consolidation measures reorganise obligations rather than remove them. Second, that the AI Omnibus, while welcome, indicates that the AI Act's deadlines were legislated before their feasibility had been verified. Third, that the cookie consent provisions in proposed Article 88b would generate new and concentrated costs under a simplification banner. It then sets out national evidence and the views of affected sectors and concludes with recommendations for how the open file could be improved.

6 'EU govts' Digital Omnibus deal stalls over trade secrets, more talks on Sunday', MLex, 7 October 2026 (https://www.mlex.com/mlex/data-privacy-security/articles/2535174); 'Vote on "Digital Omnibus" postponed until 11 October under pressure from Paris and Berlin', Agence Europe, Bulletin No. 13954, 8 October 2026 (https://agenceurope.eu/en/bulletin/article/13954/5/vote-on-digital-omnibus-postponed-until-11-october-under-pressure-from-paris-and-berlin).

What the Digital Omnibus would do

The package amends the GDPR, the Data Act, and several other instruments and adjusts the cybersecurity and AI frameworks. Its principal elements are threefold. First, it proposes a single entry point for reporting cybersecurity incidents, to be built and operated by the European Union Agency for Cybersecurity (ENISA), through which an entity would report once, and the report would be forwarded to the relevant national authorities. This reform does not change the underlying reporting obligations but rationalises the channel and formats, with the portal expected to become operational within 18 months of the Omnibus entering into force, extendable to 24 months.[7] Second, it moves cookie rules from the ePrivacy Directive into the GDPR through two new provisions: proposed Article 88a, which sets out a narrow list of consent-exempt purposes, and proposed Article 88b, which would require websites and apps to respect automated, machine-readable consent signals from two years after entry into force, with European standards to be drawn up for the signal. Providers of web browsers, other than SMEs, would have to supply the technical means to send these signals within four years (European Commission 2025a: proposed Articles 88a and 88b).[8] Third, it adjusts the GDPR in several further respects, proposing, among other things, to extend the breach-notification deadline from 72 to 96 hours and to limit notification to breaches

7 'EU Digital Omnibus: How EU data, cyber, and AI rules will shift', Jones Day, December 2025 (https://www.jonesday.com/en/insights/2025/12/eu-digital-omnibus-how-eu-data-cyber-and-ai-rules-will-shift); 'EU proposes single entry point for cyber incident reporting, but is it really "report once, share many"?', Slaughter and May, 11 December 2025 (https://thelens.slaughterandmay.com/post/102lxgd/eu-proposes-single-entry-point-for-cyber-incident-reporting-but-is-it-really-re).

8 'Digital Omnibus reshapes EU cookie rules but leaves banner fatigue largely intact', Osborne Clarke, 2025 (https://www.osborneclarke.com/insights/digital-omnibus-reshapes-eu-cookie-rules-leaves-banner-fatigue-largely-intact).

likely to result in a high risk, while presenting much of the package as a codification of existing Court of Justice case law rather than a change of policy.[9] The AI strand, examined below, postponed the AI Act's high-risk obligations without reducing their content.

9 'GDPR under revision: key takeaways from the Digital Omnibus regulation proposal', White & Case, 2025 (https://www.whitecase.com/insight-alert/gdpr-under-revision-key-takeaways-from-digital-omnibus-regulation-proposal); '2025 EU Digital Omnibus package: practical guide & explainer', Kennedys, 26 January 2026 (https://www.kennedyslaw.com/en/thought-leadership/article/2026/the-2025-european-commission-eu-digital-omnibus-package-a-practical-guide-and-explainer/).

The analytical question: cutting costs or moving them around?

The Commission presents the Omnibus as a means of ensuring that 'compliance with the rules comes at a lower cost, delivers on the same objectives, and brings in itself a competitive advantage to responsible businesses' (European Commission 2025a: explanatory memorandum, section 1). That is the appropriate ambition, but it embeds a distinction the package does not always maintain. Simplification that removes an obligation reduces costs. Consolidation that reroutes an obligation changes where the cost falls, and sometimes on whom. The two are frequently conflated in the simplification debate, and the difference is measurable: the first reduces the hours a firm spends complying, while the second does not.

A realistic assessment should also acknowledge the origin of the problem being solved. Consent fatigue and duplicative reporting are real costs, and there is a genuine case for public action to standardise fragmented rules. But the fragmentation was itself a product of public design: the EU legislated much of this field through directives, and national transpositions did the rest. The Commission now acknowledges as much. The president's call for a pact against gold-plating recognises that transposition adds burdens of its own, and on 21 September 2026, a group of member states signed a declaration committing to the 'fast and simple transposition of EU Directives, avoiding gold-plating' (Permanent Representation of Austria

to the European Union 2026).[10] The system now proposing to simplify the rulebook is the system that made it complicated, which suggests that good intentions are not the appropriate test. The relevant question is whether the file measurably reduces compliance costs, not whether it means to.

EPICENTER's EU Regulatory Observatory is a panel of 34 experts who score EU proposals on a scale from 0 (complete regulation) to 10 (complete deregulation), with 5 representing the status quo. The 22 panel members who scored the Digital Omnibus rated it at 6.55 out of 10, or 6.24 once the ratings were calibrated and weighted by the experts' self-rated confidence. The panel, which assessed the package as it stood in early November 2025, shortly before formal publication, found that it produces 'a cleaner, more coherent framework that continues to regulate just as much as before', reflecting an approach that is 'procedurally liberal but substantively conservative', and concluded that 'the next phase should address the depth and proportionality of regulation, not merely its format' (Nestoras and Mantas 2025). A score above the midpoint is a fair verdict: the direction of the file is liberal, and its ambition is modest. The sections below apply the panel's test, first to the Commission's own accounting and then to the package's three main elements.

10 The signature was confirmed by 'Slovenia signs declaration on the alliance for reducing administrative burden', Government of Slovenia, 21 September 2026 (https://www.gov.si/en/news/2026-09-21-slovenia-signs-declaration-on-the-alliance-for-reducing-administrative-burden). The count of sixteen signatories and Romania's participation are reported by 'Sixteen EU countries sign up to cut red tape', EUalive, 22 September 2026 (https://eualive.net/sixteen-eu-countries-sign-up-to-cut-red-tape/) and 'Rad nicht 27 Mal erfinden: Schellhorn startet EU-Pakt', Heute, 16 September 2026 (https://www.heute.at/s/rad-nicht-27-mal-erfinden-schellhorn-startet-eu-pakt-120252844); the German Confederation of Skilled Crafts and Small Businesses (ZDH) reports 15 delegations at the 21 September meeting: 'EU-Bürokratieabbau: Neue Allianz fordert einfachere Regeln', ZDH, September 2026 (https://www.zdh.de/ueber-uns/fachbereich-europapolitik/europa-aktuell/eu-buerokratieabbau-neue-allianz-fordert-einfachere-regeln/).

What the Commission is counting

The Commission reports progress against its target in figures that deserve scrutiny. Its simplification page states that the measures put forward so far 'will save businesses, industries, farmers and national authorities around €18 billion in annual administrative costs', against the €37.5 billion target;[11] in the State of the Union, the president put the figure for the twelve omnibus proposals at 'around €17 billion a year' (European Commission 2026a). These are forecasts rather than measured savings. Most of the measures on which these figures are based, including the Digital Omnibus, are proposals that have not been adopted, and the Commission's own simplification page, last updated on 24 June 2026, lists the digital package as 'proposed'.

The figures for the Digital Omnibus itself vary across official sources, partly because they measure different things. The explanatory memorandum of the proposal foresees 'possible savings of at least EUR 1 billion annually' in recurring costs, plus a further €1 billion in one-off savings, 'amounting to a total of at least EUR 5 billion over 3 years by 2029', a cumulative figure.[12] The Commission's questions and answers describe the same €5 billion as 'one-off savings of up to €5 billion between now and 2029'.[13] The simplification page lists €1.2 billion a year. And the commissioner responsible for simplification, Valdis Dombrovskis, was reported in August 2026 to

11 'Simpler rules for a stronger economy', European Commission, page last updated 24 June 2026.

12 See European Commission (2025a: explanatory memorandum, section 3); the same figures are reproduced in the Legislative Observatory (2025) summary of the proposal.

13 'Digital Package: general questions', European Commission, page last updated 20 November 2025 (https://digital-strategy.ec.europa.eu/en/faqs/digital-package).

have cited €860 million of annual administrative burden reduction in response to a parliamentary question.[14] Differences in scope and period explain some of the spread, but not all of it: the annual figures alone range from €860 million to €1.2 billion. The existence of several figures for the same file, from the same institution, suggests that the savings have been estimated at the proposal stage rather than measured, a gap that the regulatory audits recommended by EPICENTER's Observatory are designed to close.

The composition of the claimed savings matters more than their size. The Commission attributes 'more than €800 million in savings for businesses annually' to the updated cookie rules,[15] which, based on the Commission's own figures, account for most of the file's claimed annual saving: at least two-thirds of the €1.2 billion figure, and close to all of the €860 million one, although the Commission has not said whether the two estimates cover identical periods and cost categories. The €800 million is an estimate of administrative cost savings, and it includes savings associated with the cost of banners. It does not count the revenue at stake under the consent regime that would replace them. A Google-commissioned EU-specific scenario modelling study, based on the assumption that browser-level consent settings would cut consent rates as sharply as Apple's App Tracking Transparency did, estimated that each further 1% relative fall in the consent rate (for example, from 50% to 49.5% of users) would put €600–800 million of annual advertiser revenue at risk (Thelle et al. 2026). Revenue at risk is not a compliance cost, and the two should not simply be netted against each other. But the comparison shows the scale: the annual administrative saving attributed to the cookie reform is of the same order as the advertiser revenue at risk from a 1% relative fall in consent. An accounting that counts the banner but not the revenue measures only one side of the reform. The calculation will, in any case, need revisiting, because the Council's mandate rewrites the cookie provisions on which it rests.

14 Eunews reports the answer to parliamentary question E-002460/2026: 'Simplification: Commission is halfway through its work, red tape costs cut by 18 billion out of 37.5 billion target', Eunews, 20 August 2026 (https://www.eunews.it/en/2026/08/20/simplification-commission-is-halfway-through-its-work-red-tape-costs-cut-by-18-billion-out-of-37-5-billion-target/).

15 'Digital Package: general questions', European Commission, page last updated 20 November 2025.

Finding 1: Consolidation reorganises obligations rather than removing them

The single reporting entry point is the most concrete gain in the package. At present, a firm affected by cybersecurity incidents may be required to submit overlapping notifications under the Network and Information Security Directive (NIS2), the Digital Operational Resilience Act (DORA), the Critical Entities Resilience (CER) Directive, the GDPR, and the Electronic Identification, Authentication and Trust Services Regulation (eIDAS), which govern cybersecurity, digital resilience in finance, critical infrastructure, data protection, and electronic identification in the EU, respectively, each with its own authority, template, threshold, and deadline.[16] Consolidating these channels is likely to reduce duplication without weakening the underlying cybersecurity or data protection standards, and the Observatory panel rightly credits the harmonisation for supporting SMEs by reducing compliance fragmentation (Nestoras and Mantas 2025). The Council's mandate departs from the Commission's design: each member state would operate a national entry point, supported by an EU-level information point and a harmonised framework for cross-border notifications, which preserves some of the fragmentation the single portal was meant to remove (Council of the European Union 2026f: Annex, recitals 49 to 50c).

It is, however, also the clearest example of the distinction drawn above. The duty to report, and the substantive security obligations behind it, remain untouched. The firm must still detect, assess, and document the

16 'Digital Omnibus package: a single EU harmonised incident reporting regime across cyber and data protection', Bird & Bird, 2025 (https://www.twobirds.com/en/insights/2025/digital-omnibus-package-single-eu-harmonised-incident-reporting-regime-across-cyber-and-data-protect).

incident; it simply files once. Eurochambres makes the same point in its assessment of the proposal: the volume of notifications is not reduced; only the channels are consolidated (Eurochambres 2026). The same pattern is visible across the Commission's proposal. Cookie rules move from the ePrivacy Directive into the GDPR, but consent remains the default requirement for non-essential tracking. The breach-notification changes ease a deadline and narrow the duty without removing it. The codification of case law improves legal certainty, which has value, but it does not change what firms must do. The rulebook is being re-shelved rather than shortened. This is worth having, but it should not be counted as deregulation, and the hours it saves are likely to be modest relative to the hours the underlying obligations continue to require.

Two provisions of the Commission's own proposal are of a different kind, and a fair assessment should say so. The proposal would narrow the definition of personal data so that pseudonymised data would count as personal data only for an entity with means reasonably likely to be used to identify the person, and a new proposed Article 88c would allow the development and operation of AI to be treated as a legitimate interest for processing personal data.[17] The Council's mandate keeps the direction of both: it retains the entity-relative test for when information counts as personal data, adds a new Article 25a on pseudonymisation under which pseudonymised data are not personal data for a third party unable to identify the person, and keeps the AI legitimate-interest provision, renumbered Article 88 bis (Council of the European Union 2026f: Annex, Articles 4(1), 25a and 88 bis). These are changes to what firms must do, not only to where they report it, and they are the kind of changes the simplification test favours. They have also met the strongest resistance: the European Consumer Organisation (BEUC) has warned that the latest Irish text 'threatens to undo over a decade of regulatory refinement and legal precedence'.[18] Germany, for its part, is pressing in the opposite direction, with a working document that would exempt 'low-risk data controllers', including micro-enterprises, SMEs, and non-profits, from

17 See European Commission (2025a: Article 3), amending Article 4(1) of the GDPR and inserting a new Article 88c; 'Pseudonymised data, cookies… Irish Presidency of EU Council sets out compromise options on Digital Omnibus', Agence Europe, Bulletin No. 13933, 9 September 2026; 'Irish Presidency of EU Council clarifies safeguards on pseudonymised data and consent exemptions for cookies', Agence Europe, Bulletin No. 13943, 23 September 2026; Council of the European Union (2026a, 2026b).

18 'Digital Omnibus must not sacrifice consumers' personal data and right to privacy', BEUC-X-2026-83, BEUC, 23 September 2026 (https://www.beuc.eu/letters/letter-digital-omnibus-must-not-sacrifice-consumers-personal-data-and-right-privacy).

many GDPR obligations.[19] The contrast is instructive. Consolidation is politically inexpensive because it changes little; substantive simplification is contested because it changes something. A simplification agenda that intends to meet its own targets will have to make, and defend, choices of the second kind, with the trade-offs stated openly rather than hidden inside procedural reform.

19 'Vote on "Digital Omnibus" postponed until 11 October under pressure from Paris and Berlin', Agence Europe, Bulletin No. 13954, 8 October 2026.

Finding 2: The AI Omnibus indicates that deadlines were set before feasibility was verified

The AI strand of the package is no longer a proposal. The Digital Omnibus on AI received the Council's final approval on 29 June 2026, was signed by the European Parliament and the Council on 8 July 2026 as Regulation (EU) 2026/1744, and entered into force on 27 July 2026, three days after its publication in the Official Journal, rather than the usual twenty days, in order to precede the AI Act's original high-risk deadline of 2 August 2026. It postpones the high-risk obligations for stand-alone Annex III systems to 2 December 2027, and for high-risk AI embedded in Annex I products to 2 August 2028.[20] The Commission had proposed that the obligations should apply six or twelve months after it confirmed that standards or guidance were available, with the same two dates as backstops; the co-legislators kept only the fixed dates (European Union 2026; European Union 2025: recital 22 and Article 1). The postponement is the central change. It is accompanied by targeted administrative and implementation adjustments: simplified registration of certain AI systems in the EU database, a softened AI-literacy duty, stronger Union-level coordination of regulatory sandboxes and wider real-world testing, and proportionality measures for SMEs.[21] Not all of the changes lighten the load: the general-purpose AI obligations are unchanged; most Article 50 transparency obligations still apply from 2 August 2026, with a grace period

20 'Artificial Intelligence: Council and Parliament agree to simplify and streamline rules', Council of the European Union, 7 May 2026 (https://www.consilium.europa.eu/en/press/press-releases/2026/05/07/artificial-intelligence-council-and-parliament-agree-to-simplify-and-streamline-rules/).

21 See European Union (2026: Article 1), amending Articles 4, 49, 57, 58 and 60 of Regulation (EU) 2024/1689 and inserting a definition of small mid-cap enterprises.

until 2 December 2026 for the marking of content by systems already on the market; and two new prohibitions were added to Article 5, applying from 2 December 2026.[22] The high-risk obligations, the core of the Act's compliance burden, were deferred rather than reduced.

The stated reason for the postponement is instructive. Recital 40 of the Regulation points to 'the delayed availability of standards, common specifications, and alternative guidance and the delayed establishment of national competent authorities' (European Union 2026: recital 40).[23] The standards problem can be measured. The Commission requested harmonised standards from the European standardisation bodies in May 2023, with an initial deadline of 30 April 2025 (EPRS 2025). In October 2025, the European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standardization (CENELEC) adopted an 'exceptional package of measures', including direct publication after a positive enquiry vote, to make the standards available by the fourth quarter of 2026.[24] As of 11 October 2026, the first standard drafted for the Act, EN 18286:2026 on quality management systems, had been published by CEN and CENELEC in July 2026. But no AI Act standard had been cited in the Official Journal, the step that gives firms a presumption of conformity.[25] In other words, the AI Act entered into force in August 2024 with fixed application dates premised on a compliance ecosystem arriving on schedule, but that ecosystem did not arrive. Additional time to comply is welcome, and more realistic deadlines are preferable to unattainable ones. But a statute whose central obligations must be

22 EU AI Act unpacked #34: the final Digital Omnibus on AI', Freshfields, 10 July 2026 (https://www.freshfields.com/en/our-thinking/blogs/technology-quotient/eu-ai-act-unpacked-34-the-final-digital-omnibus-on-ai-key-amendments-to-the-a-102nber); 'EU AI Omnibus enters into force, amending AI Act', White & Case, 2026 (https://www.whitecase.com/insight-alert/eu-ai-omnibus-enters-force-amending-ai-act).

23 'EU AI Act amendments defer and clarify obligations', Akin Gump, 30 July 2026 (https://www.akingump.com/en/insights/alerts/eu-ai-act-amendments-defer-and-clarify-obligations).

24 'Update on CEN and CENELEC's decision to accelerate the development of standards for Artificial Intelligence', CEN-CENELEC, 23 October 2025 (https://www.cencenelec.eu/news-events/news/2025/brief-news/2025-10-23-ai-standardization/).

25 'EN 18286 in the spotlight: supporting compliance with the AI Act', CEN-CENELEC, 30 July 2026 (https://www.cencenelec.eu/news-events/news/2026/en-in-the-spotlight/2026-07-30-ai-quality-management/), describing EN 18286:2026 as 'the first harmonized European standard for the AI Act regulatory purposes'; 'Harmonised standards', European Commission, list by legislation, with no entry for the AI Act as at 11 October 2026 (https://single-market-economy.ec.europa.eu/single-market/goods/european-standards/harmonised-standards_en); 'Standardisation of the AI Act', European Commission (https://digital-strategy.ec.europa.eu/en/policies/ai-act-standardisation).

postponed before they first apply appears not to have been calibrated to the conditions it regulates. This is not necessarily an argument against regulating AI. In this briefing's assessment, it is evident that the original file legislated deadlines before verifying that compliance was practically possible, which is precisely the question an ex-ante feasibility and proportionality review is designed to ask.

The episode also carries a cost that has received comparatively little attention. Firms that treated the original 2 August 2026 deadline as binding will have invested in staff, documentation, and audits to meet it; firms that delayed compliance will benefit from sixteen additional months without incurring the same costs. Retrospective adjustment of this kind risks penalising early compliance and rewarding a wait-and-see approach. It may also lead firms to discount future EU deadlines, a credibility cost that would outlast this file. The Commission's new commitment to 'simplicity-by-design' is the right response, provided it includes a feasibility test: a rule is not simple if the infrastructure needed to comply with it does not yet exist.

Finding 3: Proposed Article 88b could leave the choice of default to browser vendors and concentrate costs on smaller market participants

The cookie consent provisions are the element of the package where a simplification measure risks generating new costs rather than relocating existing ones. Proposed Article 88b would require websites and apps to allow users to give or refuse consent 'through automated and machine-readable means' and to respect those choices from two years after entry into force; the Commission would ask the European standardisation bodies to develop standards for the signal, and the interfaces that follow them would be presumed compliant. It would also require providers of web browsers, other than SMEs, to supply the technical means (European Commission 2025a: proposed Article 88b).[26] The objective of reducing consent fatigue is legitimate, and the current system of cookie banners has well-recognised shortcomings. A signal that replaced most banners would save money for websites and time for users; however, the question is what it would cost elsewhere. The text does not say which way the browser setting should point, and that silence is a design problem: it asks the European standardisation bodies to define how choices are encoded, but unless those standards also settle the default, the vendors will. As EPICENTER's July 2026 briefing documents, behavioural research finds

26 'Digital Omnibus reshapes EU cookie rules but leaves banner fatigue largely intact', Osborne Clarke, 2025 (https://www.osborneclarke.com/insights/digital-omnibus-reshapes-eu-cookie-rules-leaves-banner-fatigue-largely-intact); 'EU Digital Omnibus: key GDPR proposals', William Fry, December 2025 (https://www.williamfry.com/wp-content/uploads/2025/12/EU-Digital-Omnibus-Key-GDPR-Proposals.pdf).

that default settings substantially influence user choices and that relatively few users change them (Năsulea 2026). Therefore, whoever sets the default largely sets the outcome. Under the proposal, that could in practice be a handful of browser vendors. The largest of them, Google, Apple, and Microsoft, also sell advertising and run large logged-in platforms that would benefit from scarce consent, a conflict of interest the text does not address. No independent study models proposed Article 88b as drafted; the only EU-specific modelling study, commissioned by Google, assumes that a browser-level signal would cut consent as sharply as Apple's tracking prompt did. The rest of the economic evidence below concerns opt-in regimes and the loss of third-party cookies, the closest available analogues to a scenario in which refusal becomes the browser's starting point and most users leave it there.

The Commission anticipated one objection. Proposed Article 88b(3) exempts media service providers from the obligation to respect the signal, citing 'the importance of online revenue streams for independent journalism as an indispensable pillar of a democratic society' (European Commission 2025a: explanatory memorandum; proposed Article 88b(3)). The exemption narrows the problem but does not remove it, for three reasons. First, it covers only media service providers as defined in the European Media Freedom Act, so many independent and specialist websites, apps, e-commerce, and comparison services are likely to fall outside it. Second, exempt publishers sell advertising through the same programmatic market as everyone else, so a fall in the value of that market would be likely to affect them too. Third, the exemption applies only to proposed Article 88b. Proposed Article 88a(4) would still require every website, including media websites, to offer refusal with a single click, and would prohibit websites from asking again for the same purpose for at least six months after a refusal (European Commission 2025a).[27] This is why media associations called the exemption 'not sufficient to preserve the viability of our sector'.[28]

The proposition that consent rates are determined by choice architecture rather than stable user preferences is not just an inference from behavioural theory. It can be observed directly, because users have already been

27 'Digital Omnibus reshapes EU cookie rules but leaves banner fatigue largely intact', Osborne Clarke, 2025; 'EU Digital Omnibus: key GDPR proposals', William Fry, 2025.

28 'European media associations call on the EU to reconsider introducing data usage consent restrictions in the Digital Omnibus', European Broadcasting Union (EBU), May 2026 (https://www.ebu.ch/news/2026/05/european-media-associations-call-on-the-eu-to-reconsider-introducing-data-usage-consent-restrictions-in-the-digital-omnibus).

presented with the same underlying question under different architectures, and the outcomes span almost the full range. Under the ‘pay or okay’ model of the Austrian newspaper DerStandard, where the alternative to consent is a paid subscription, consent reached 99.9%, according to noyb, the privacy organisation whose 2021 complaint to the Austrian Data Protection Authority against DerStandard’s cookie paywall led to the case. Austria’s Federal Administrative Court ruled in August 2025 that DerStandard’s model breached the GDPR because users could not consent to individual purposes.[29] An international study by a web analytics consultancy, covering 1.2 million visitors from many countries to business-to-business websites in the first half of 2023, examined user responses to a standard banner offering ‘accept all’, ‘reject all’ and ‘cookie settings’. It found that only 25.4% accepted all cookies, with most of the rest closing or ignoring the banner, and with users in Germany and France the most likely to reject all.[30] Under a strict opt-in system, as the Dutch public broadcaster Nederlandse Publieke Omroep (NPO) experienced after the GDPR, consent for advertising cookies fell to around 10%, from over 75% before.[31] Survey evidence points the same way. In a noyb-commissioned survey of Austrian internet users, 21% agreed to companies collecting and analysing their personal data when asked neutrally; faced with a choice between paying and consenting, around nine in ten chose consent; and when a third option of ‘advertising without tracking’ was offered, between 65% and 71% chose it (Naderer 2025). The same underlying question thus produces consent rates from around 10% to over 99% depending on how the choice is framed; within Austria alone, the range runs from 21% to 99.9%. This is the strongest available evidence that whichever default ends up in the browser will not reveal European preferences but manufacture them. Choosing it is therefore a policy decision, and one the proposal does not make openly.

29 ‘Court decides “Pay or Okay” on DerStandard.at is illegal’, noyb, 18 August 2025 (https://noyb.eu/en/court-decides-pay-or-okay-derstandardat-illegal); Bundesverwaltungsgericht (Austrian Federal Administrative Court), judgment of 13 August 2025, W291 2272970-1/30E and W291 2272971-1/32E, on appeal from the decision of the Datenschutzbehörde of 29 March 2023, D124.4574, redacted copy published by noyb (https://noyb.eu/sites/default/files/2025-08/20250818145608738p_Redacted.pdf); complaints filed 13 August 2021 (‘News sites: readers need to buy back their own data at an exorbitant price’, noyb, https://noyb.eu/en/news-sites-readers-need-buy-back-their-own-data-exorbitant-price).

30 ‘Cookie behaviour study’, Advance Metrics, 17 April 2024 (https://www.advance-metrics.com/en/blog/cookie-behaviour-study/).

31 ‘Data from Dutch public broadcaster shows the value of ditching “creepy” ads’, TechCrunch, 24 July 2020 (https://techcrunch.com/2020/07/24/data-from-dutch-public-broadcaster-shows-the-value-of-ditching-creepy-ads).

Industry data show the same sensitivity from the publishers' side. Didomi, a provider of consent-management tools and a signatory to the industry letter against proposed Articles 88a and 88b discussed below, examined consent rates for European websites in 2025. It found that the consent rate for media and publishers was 82.7% among users who made a choice, and that their opt-in rate was 64.4% of all banner displays, well above the figures cited above (Didomi 2026).[32] The gap is largely one of definition and sample: Didomi's consent rate counts only users who made a choice, on optimised client banners, whereas the business-website study counts every visitor. It also shows what publishers currently achieve by investing in consent design, and therefore what a browser-level setting, which would override site-level design, would put at risk.

The economic evidence, reviewed in detail in EPICENTER's July 2026 briefing on this provision (Năsulea 2026), points in one direction, and the independent evidence is examined first. Apple's App Tracking Transparency, the closest real-world precedent for an opt-in default, reduced tracking rates by 46 percentage points on average across nineteen countries, and by between 35 and 50 percentage points in the seven EU markets studied (Kraft, Skiera, and Koschella 2023). A peer-reviewed field experiment covering more than 5,000 publishers estimates that removing third-party cookies reduces publisher advertising revenue by 29.1%, and that Google's Privacy Sandbox, the leading browser-based alternative, recovered only 4.2% of the loss at observed adoption levels (Gu, Johnson, and Kobayashi 2026). Two further sources come from Google and should be read with that in mind. A randomised experiment run by Google on the top 500 global publishers using its ad platform found that publishers' programmatic revenue through that platform fell by 52% on average, with a median decline of 64% when third-party cookies were disabled for a random group of users (Ravichandran and Korula 2019). An EU-specific modelling commissioned by Google, which assumes that browser-level consent settings would cut consent rates by 60–65%, in line with the Apple experience, estimates that at least €40–50 billion, or 30–35%, of European advertiser revenue would be at risk for the same advertising spend; this is a modelled estimate under an assumed fall in consent, not a forecast of a certain loss, with each further 1% relative decline in the consent rate putting an estimated €600–800 million a year at risk (Thelle et al. 2026).

32 Didomi (2026) defines the consent rate as opt-ins divided by all choices made, and the opt-in rate as opt-ins divided by all banners displayed. 'Consent rate by industry in Europe: Data privacy benchmark 2026', Didomi, 25 May 2026 (https://www.didomi.io/blog/benchmark-consent-rate-by-industry-europe-2026).

The units differ: the Apple figures are falls in percentage points, while Thelle et al. (2026) express changes relative to the current consent rate. The evidence is not unanimous. A study of one large US media company's advertising transactions during a single week in 2016 found that impressions sold with a cookie available earned only about 4% more than those sold without one (Marotta, Abhishek, and Acquisti 2019). That figure measures the premium on individual impressions while cookies remained available to the market as a whole; the later field experiment, which removed cookies for a share of users across more than 5,000 publishers, found a far larger loss, and is the better guide to what a market-wide fall in consent would do. For scale, European digital advertising spend reached €131.1 billion in 2025, up 10.5% on the year (IAB Europe 2026).

The distribution of these losses matters as much as their size. Independent publishers, SMEs, and open-web advertisers depend on third-party data, that is, information about users collected across other websites, typically through cookies, to sell and buy advertising; large integrated platforms can monetise logged-in audiences through first-party data, that is, information they collect directly from their users, which a browser signal is likely to affect far less, although their exposure varies with the service and the advertising model. The research on the GDPR's market effects offers a cautionary parallel. After the GDPR took effect, websites cut their use of web technology vendors by 15% but were more likely to keep the largest ones, so that concentration in the vendor market rose by 17%, with Google- and Facebook-owned vendors gaining share. The authors attribute the shift to websites dropping smaller vendors rather than to consent requests as such. The pattern is nonetheless relevant: rules that raise the cost of using data favour the firms best placed to absorb it (Johnson, Shriver, and Goldberg 2023; Năsulea 2026). A measure presented as empowering users could therefore strengthen the market position of the largest platforms, an outcome difficult to reconcile with the objectives of the EU's wider digital agenda.

Competition authorities have already examined what happens when a dominant platform designs the consent prompt. In 2025, France's Autorité de la concurrence fined Apple €150 million, and Italy's competition authority fined it €98.6 million, both for abusing its dominant position in the way it

implemented its App Tracking Transparency prompt.[33] Neither authority objected to the privacy objective; both found the design disproportionate, notably because it forced third-party developers to collect a second, redundant consent. The French authority also found that, until iOS 15, Apple did not ask users of its own apps for the same consent, and that the framework was 'particularly harmful for smaller publishers that do not enjoy alternative targeting possibilities, in particular in the absence of sufficient proprietary data'. Unless the standards settle the default, proposed Article 88b could place a comparable design choice for the whole web in the hands of browser vendors. The Digital Markets Act offers only partial protection: Article 5(2) bars designated gatekeepers from combining personal data across their services without consent, but it does not remove the advantage of a platform that can use the data its own logged-in users generate within a single service (European Union 2022).

One prominent counter-example deserves direct engagement. The Dutch public broadcaster NPO removed third-party tracking entirely in January 2020 and sold advertising through contextual targeting alone; according to figures its sales house shared with Brave, revenue rose by 62% year on year in January and by 79% in February, and growth continued through the first half of the year. Year-on-year growth does not by itself show that removing tracking caused the increase.[34] The case demonstrates that contextual advertising can perform well, and it should not be dismissed. But the circumstances of the case limit how far it can be generalised. NPO entered the transition with a consent rate of around 10%, so it had little tracking-based revenue left to lose; it is a national broadcaster whose sales house sells inventory collectively across an entire portfolio of sites; and it invested in descriptive metadata for its content, including mining programme subtitles, before switching. Few independent publishers share any of these conditions, and the field-experimental evidence on the average publisher (Gu, Johnson, and Kobayashi 2026) points the other way. NPO is evidence of what a uniquely positioned organisation can achieve with

33 'Targeted advertising: the Autorité de la concurrence imposes a fine of €150,000,000 on Apple', Decision 25-D-02, Autorité de la concurrence, 31 March 2025 (https://www.autoritedelaconcurrence.fr/en/press-release/targeted-advertising-autorite-de-la-concurrence-imposes-fine-eu150000000-apple); 'A561 – The Italian Competition Authority fines Apple over 98 million euro for abuse of a dominant position', Autorità Garante della Concorrenza e del Mercato, 22 December 2025 (https://en.agcm.it/en/media/press-releases/2025/12/A561).

34 'Update (six months of data): lessons for growing publisher revenue by removing 3rd party tracking', Brave, July 2020 (https://brave.com/blog/publisher-3rd-party-tracking/); 'Data from Dutch public broadcaster shows the value of ditching "creepy" ads', TechCrunch, 2020.

contextual advertising; it is not evidence that the open web as a whole can absorb a consent collapse.

Successive Council presidencies have taken the objection seriously, and the Council's negotiating mandate of 21 October 2026 confirms their approach. On 8 June 2026, member states' ambassadors gave guidance on, in the words of the Council's own note, 'the proposed new provision mandating an automated and centralised consent signal for the placing of cookies and the absence of impact assessment in this regard'.[35] The Cyprus Presidency's compromise texts of mid-June, consolidated in ST 10677/26 of 18 June 2026, then struck both new articles from the GDPR and moved the cookie rules back into Article 5(3) of the ePrivacy Directive, keeping the single-click refusal and the six-month bar on repeat requests but dropping the browser signal (Council of the European Union 2026d: Annex, pp. 117–119 and 128–129). In their written comments on the Presidency's text, Germany said it could support the deletion, which met its call for the impact assessment it had 'strongly demanded'; Poland welcomed it; and Denmark and Luxembourg also backed it. France's written comments do not address the provision, although noyb listed it among the deletion's supporters.[36] The privacy group noyb has linked the deletion to lobbying by Google and the advertising industry, although the Council's own note records only that ambassadors gave guidance on the provision 'and the absence of impact assessment in this regard'. The Irish Presidency's texts keep that structure and widen the exemptions from consent. The 3 September text clarifies the exemption for audience measurement and adds one for measuring the display and performance of contextual advertising; the 2 October text cuts the period during which a refused request may not be repeated from six months to four months, and asks the Commission to report within twelve months on the use of

35 Council of the European Union (2026c: point 8), which reads in full: 'On 8 June 2026, the Permanent Representatives Committee held a discussion on the proposal and provided guidance for further work in particular on matters related to the protection of trade secrets under the Data Act, the proposed new provision mandating an automated and centralised consent signal for the placing of cookies and the absence of impact assessment in this regard, as well as the necessary degree of flexibility for the establishment by Member States of a national entry point for cyber security and data incidents.'

36 'EU Member States (and Google) suddenly want to keep cookie banners!', noyb, 23 June 2026 (https://noyb.eu/en/eu-member-states-and-google-suddenly-want-keep-cookie-banners); Council of the European Union (2026e): Germany: 'Germany can support the deletion of Article 8a (Article 88b in the Commission proposal), which corresponds to the need of an impact assessment, that Germany strongly demanded for'; Poland: 'We welcome the deletion'; Denmark and Luxembourg also support deletion; France's comments do not address the provision.

privacy-enhancing technologies (Council of the European Union 2026a: proposed Article 5(3), point (f), and recital 44f; Council of the European Union 2026b; Council of the European Union 2026c: points 9–11). The mandate agreed by ambassadors on 21 October 2026 keeps that structure: proposed Articles 88a and 88b remain struck out, the cookie rules stay in Article 5(3) of the ePrivacy Directive with a list of six consent-free purposes, and the four-month period is retained (Council of the European Union 2026f: Annex, Article 5 amending Article 5(3) of Directive 2002/58/EC; Article 88b struck out at p. 144).[37] This moves in the direction EPICENTER has recommended (Năsulea 2026), but it does not settle the question. On 10 September, a coalition of nineteen civil society organisations, businesses, and academics, including BEUC, European Digital Rights (EDRi), and noyb, wrote to the Irish Presidency, the Parliament's co-rapporteurs, and Commissioners Virkkunen and McGrath, asking for proposed Article 88b to be reinserted, describing it as 'the only genuine simplification measure that benefits users'.[38] Whether the browser signal returns, and on what terms, will now be decided in Parliament and in the trilogue that follows, and that choice will be a reasonable indicator of whether the simplification agenda is a cost-reduction exercise or a relabelling one.

Europe has tried browser-level solutions before, and the record is instructive. The Commission's 2017 proposal for an ePrivacy Regulation required browsers and similar software to offer privacy settings and to ask users to choose one at installation (European Commission 2017: Article 10). The Council's 2021 negotiating mandate contained no such article, and the Commission withdrew the whole proposal in 2025, after eight years without agreement (Official Journal of the European Union 2025).[39] In 2012, Microsoft switched on the 'Do Not Track' signal by default in Internet

37 'Pseudonymised data, cookies… Irish Presidency of EU Council sets out compromise options on Digital Omnibus', Agence Europe, Bulletin No. 13933, 9 September 2026; 'Irish Presidency of EU Council clarifies safeguards on pseudonymised data and consent exemptions for cookies', Agence Europe, Bulletin No. 13943, 23 September 2026.

38 'Joint call to replace cookie banners with automated signals (Article 88b proposal for a Digital Omnibus COM(2025) 837 final)', Kill the Cookie Banner, 10 September 2026 (https://noyb.eu/sites/default/files/2026-09/Joint%20letter%20Kill%20the%20Cookie%20Banner%20Campaign%2010092026.pdf); 'Open Letter: Civil society coalition urges EU to kill the cookie banner!', noyb, 10 September 2026 (https://noyb.eu/en/open-letter-civil-society-coalition-urges-eu-kill-cookie-banner), which gives the count of 19 members and quotes BEUC and EDRi.

39 'Confidentiality of electronic communications: Council agrees its position on ePrivacy rules', Council of the European Union, 10 February 2021 (https://www.consilium.europa.eu/en/press/press-releases/2021/02/10/confidentiality-of-electronic-communications-council-agrees-its-position-on-eprivacy-rules/).

Explorer 10; the advertising industry declined to honour a signal that the browser, rather than the user, had set, and Microsoft abandoned the default in 2015.[40] The signal that has worked, Global Privacy Control, is treated in California and Colorado as a legally binding request to opt out of the sale or sharing of personal data, and California will require browsers to offer such a signal from 2027.[41] It is designed to express a user's own choice within an opt-out regime, rather than to stand in for consent. That is the asymmetry a refusal-only signal would face in the EU's opt-in system: a signal can communicate a refusal, but unless it can also communicate valid consent, every site that needs consent must still ask. Germany's ordinance on consent-management services, in force since April 2025, offers a live European test: participation by websites is voluntary, and as of October 2026, the federal data protection commissioner's register lists a single recognised service.[42]

40 'Advancing consumer trust and privacy: Internet Explorer in Windows 8', Microsoft, 31 May 2012 (https://blogs.microsoft.com/on-the-issues/2012/05/31/advancing-consumer-trust-and-privacy-internet-explorer-in-windows-8/); 'Digital Advertising Alliance gives guidance to marketers for Microsoft IE10 Do Not Track default setting', Digital Advertising Alliance, 9 October 2012 (https://digitaladvertisingalliance.org/press-release/digital-advertising-alliance-gives-guidance-marketers-microsoft-ie10-%E2%80%98do-not-track%E2%80%99); 'An update on Microsoft's approach to Do Not Track', Microsoft, 3 April 2015 (https://blogs.microsoft.com/on-the-issues/2015/04/03/an-update-on-microsofts-approach-to-do-not-track/).

41 'Attorney General Bonta announces settlement with Sephora as part of ongoing enforcement of California Consumer Privacy Act', California Attorney General, 24 August 2022 (https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-settlement-sephora-part-ongoing-enforcement); 'Colorado's approval of Global Privacy Control', Future of Privacy Forum, 2024 (https://fpf.org/blog/colorados-approval-of-global-privacy-control-implications-for-advertisers-and-publishers/); 'Governor signs groundbreaking privacy bill making it easier for Californians to protect their personal data', California Privacy Protection Agency, 8 October 2025 (https://cppa.ca.gov/announcements/2025/20251008_2.html).

42 'Dienste zur Einwilligungsverwaltung nach § 26 TDDDG Einwilligungsverwaltungsverordnung (EinwV)', Bundesbeauftragte für den Datenschutz und die Informationsfreiheit (BfDI), 2025 (https://www.bfdi.bund.de/DE/Fachthemen/Inhalte/Telefon-Internet/Einwilligungsverwaltung/Einwilligungsverwaltung.html).

National evidence: the incidence across member states

Who bears the cost of the package, and of proposed Article 88b in particular, is easiest to observe country by country, because the exposure of national markets to a consent shock varies with market structure. Four snapshots follow: France as a worked example, and Germany, Poland, and Romania as corroborating evidence. Germany and Poland, which backed the deletion of proposed Article 88b in writing, and France, which noyb listed among its supporters, all have large or fast-growing open-web advertising markets.

France. France offers the closest thing in the EU to a preview of a consent shock, because its regulator has already tightened the rules on consent design. The guidelines of the Commission nationale de l'informatique et des libertés (CNIL), France's data protection authority, which have been applicable since April 2021, required refusing cookies to be as easy as accepting them. Across French users of Didomi's consent-management tools, the consent rate fell from 94% in February 2021 to 86% in April 2021, a fall that coincided with the new design requirements, while the underlying rules on tracking remained unchanged.[43] Enforcement has been sustained. Between 2020 and 2022, CNIL carried out 125 online inspections, issued 94 formal notices, and imposed eight sanctions, totalling €421 million, and among the 1,000 most-visited French websites, the share depositing more than six third-party cookies halved, from 24% in January 2021 to 12% in August 2022.[44] In September 2025, CNIL fined

43 'Comment les recommandations de la CNIL affectent-elles réellement le taux de consentement?', Didomi, 7 June 2021 (https://www.didomi.io/fr/blog/recommandations-cnil-taux-de-consentement).

44 'Évolution des pratiques du web en matière de cookies : la CNIL évalue l'impact de son plan d'action', CNIL, 16 May 2023 (https://www.cnil.fr/fr/evolution-des-pratiques-du-web-en-matiere-de-cookies-la-cnil-evalue-limpact-de-son-plan-daction).

Google €325 million, partly for cookies deposited without consent and partly for advertisements inserted among Gmail users' emails, and Shein €150 million for cookies deposited without consent.[45]

Meanwhile, the divergence between publishers and platforms that this briefing describes is already visible in French market data, although many factors besides consent drive it. In 2025, the 'Édition et info' (publishing and news) category of the Observatoire de l'e-pub of the Syndicat des Régies Internet (SRI) and the Union des Entreprises de Conseil et Achat Média (UDECAM) was the only one of the four publisher categories to record a fall in display revenue, down 8% from €548 million to €504 million. In the same year, France's overall digital advertising market grew by 11% to €12.44 billion, and eight global platforms, led by Alphabet, Meta, and Amazon, captured around 76% of the market and 83% of its growth.[46] In a December 2025 statement on the Digital Fairness Act, three French industry associations estimated that restricting ad targeting would reduce publishers' advertising revenue by between 30% and 45%.[47] If the eight-percentage-point fall that coincided with CNIL's design rules is a guide, refusal as the default browser setting would remove the choice from the site altogether and could be expected to lower consent considerably further. When Apple made tracking opt-in, the tracking rate in France fell by 37 percentage points (Kraft, Skiera, and Koschella 2023). Many French news publishers may qualify as media service providers under the European Media Freedom Act, whose definition covers press publications, and so be exempt from the signal under proposed Article 88b(3), although they would remain bound by the single-click refusal mandate and the bar on repeat requests in proposed Article 88a(4) (European Union 2024: Article 2(1) and (2); European Commission 2025a: proposed Article 88b(3)). The exposure is highest for the many French sites outside the exemption. For them, the administrative gains of the

45 'Régulation des cookies: la CNIL poursuit le plan d'action initié en 2019 et prononce deux amendes à l'encontre de GOOGLE et SHEIN', CNIL, 3 September 2025 (https://www.cnil.fr/fr/regulation-des-cookies-la-cnil-poursuit-le-plan-daction-initie-en-2019-et-prononce-deux-amendes).

46 '35ème Observatoire de l'e-pub', SRI, 10 February 2026 (https://www.sri-france.org/observatoire-epub/35eme-observatoire-de-le-pub/). The eight platforms are Alphabet, Meta, Amazon, TikTok, LinkedIn, Snap, X, and Pinterest.

47 See the joint press release of Alliance Digitale, Groupement des éditeurs de services en ligne (GESTE), and SRI on the Digital Fairness Act: 'Digital Fairness Act (DFA) Digital Fairness Act (DFA): le secteur numérique appelle à la cohérence réglementaire pour protéger les consommateurs et préserver la compétitivité des entreprises en Europe', Alliance Digitale, GESTE, and SRI, 15 December 2025 (https://www.sri-france.org/wp-content/uploads/2025/12/CP-Agenda-consommateurs-DFA-Alliance-digitale-GESTE-SRI_vDEF.pdf).

Omnibus, a single reporting point and codified cookie rules, are unlikely to offset a revenue effect of that scale.

Germany. Germany is the EU's largest display advertising market, at about €5.2 billion in 2025, excluding social media, second in Europe only to the United Kingdom (IAB Europe 2026). By the national measure of Online-Vermarkterkreis (OVK), the online marketers' circle within the digital industry association Bundesverband Digitale Wirtschaft (BVDW), which covers online display and video advertising, the market reached €7.53 billion in 2025, up 9.6% on the year. Of that, 78%, almost €5.9 billion, was traded programmatically, that is, through automated auctions for individual ad placements, and the OVK expects the share to reach 80% in 2026 (OVK 2026). Programmatic trading on the open web relies on identifiers, such as cookies, which require consent under EU rules, so the German market's absolute exposure to a fall in consent is likely to be large. Under Apple's opt-in regime, the tracking rate in Germany fell by 50 percentage points, the largest reduction among the EU markets studied (Kraft, Skiera, and Koschella 2023). In its written comments to the Council, the German government said it could support the deletion of proposed Article 88b, which met its call for the impact assessment it had 'strongly demanded', a position consistent with that assessment.

Poland. Poland's online advertising market reached a record 10.9 billion złoty in 2025, approximately €2.6 billion at the European Central Bank's 2025 average exchange rate, an increase of 14.6%, with display and video generating almost 40% of the market's growth.[48] The internet now accounts for over 60% of Polish advertising expenditure.[49] In a market growing this fast, a fall in consent would be likely to slow the growth of display advertising as well as reduce existing revenue. The observed reduction in the Polish tracking rate under Apple's opt-in regime was 38 percentage points (Kraft, Skiera, and Koschella 2023). Poland also welcomed the deletion of the browser-signal provision in its written comments to the Council.

48 'Rynek reklamy online odnotowuje kolejny rekordowy wynik (badanie IAB Polska/PwC AdEx za 2025 r.)', IAB Polska, 11 May 2026 (https://www.iab.org.pl/aktualnosci/reklama-online-z-kolejnym-rekordem-w-2025-roku-iab-polska-pwc-adex/); conversion at the European Central Bank (ECB) 2025 annual average reference rate of 4.2397 złoty per euro (ECB Data Portal, series EXR.A.PLN.EUR.SP00.A).

49 'Raport Strategiczny Internet 2025/2026', IAB Polska, 18 June 2026 (https://raportstrategiczny.iab.org.pl/wydatki-na-reklame-online/), as reported in 'Poland's digital ad market hits 11 bln PLN: what the IAB report reveals', PPC Land, June 2026 (https://ppc.land/polands-digital-ad-market-hits-11-bln-pln-what-the-iab-report-reveals/).

Romania. The Central and South-Eastern European markets grew by more than 20% in aggregate in 2025, roughly twice the pace of the region's more mature markets (IAB Europe 2026). Romania illustrates what this means at the national scale: the total net media market reached approximately €838 million in 2025, up 5.4%, with digital advertising at €327 million, up 10%, the fastest-growing channel (Initiative România 2026). PwC, using its own narrower definition, puts internet advertising at €287 million in 2025 and projects €393 million by 2030, in a market it describes as dominated by Google.[50] Publishers in younger digital markets are likely to have smaller logged-in audiences, so a fall in consent could lead to a heavier burden in European digital publishing markets that are still developing, and reinforce the position of the platforms that already dominate the market. Romania was among the markets covered by the App Tracking Transparency study, which recorded a 35-percentage-point reduction in the tracking rate under an opt-in default (Kraft, Skiera, and Koschella 2023).

50 'Romania's entertainment and media industry to reach EUR 5.22 billion this year, driven by digital segments', PwC Romania, 3 August 2026 (https://www.pwc.ro/en/press-room/press-releases-2026/PwC-report-Romania-s-entertainment-and-media-industry-to-reach-EUR-5-22-billion-this-year-driven-by-digital-segments.html).

What affected sectors say

The concerns set out above are not only EPICENTER's. Business associations across the digital economy have reached similar conclusions about the package as a whole. DIGITALEUROPE welcomed it as 'Europe's first attempt to move its digital rulebook from expansion towards simplification', but concluded that 'the omnibus is still largely an administrative clean-up'.[51] Eurochambres found that 'the proposal focuses predominantly on procedural adjustments rather than structural burden reduction', and that 'the cumulative weight of multiple overlapping digital acts remains excessive, particularly for micro and small enterprises lacking specialized compliance resources' (Eurochambres 2026).

On the cookie provisions, the sectors that depend on advertising are almost unanimous. Seven European media associations, representing broadcasters and magazine and newspaper publishers, described the restrictions in proposed Article 88a(4), which would require a single-click refusal option and bar websites from asking again for at least six months after a refusal, as 'disproportionate and unworkable' and called for the deletion of proposed Articles 88a(4) and 88b.[52] An open letter from 46 European companies, including Criteo, Canal+, Dailymotion, Didomi, and

51 'Digital omnibus: a first step and what must come next, now', DIGITALEUROPE, 16 February 2026 (https://cdn.digitaleurope.org/uploads/2026/02/Digital-omnibus-a-first-step-and-what-must-come-next-now.pdf).

52 Joint statement of the Association of Commercial Television and Video on Demand Services in Europe (ACT), the European Broadcasting Union (EBU), egta (the association of television and radio sales houses), the European Magazine Media Association (EMMA), the European Newspaper Publishers' Association (ENPA), the European Publishers Council (EPC), and News Media Europe on the Digital Omnibus: 'Media concerns on the Digital Omnibus: consent-related provisions increase complexity and hinder viability', News Media Europe, 6 May 2026 (https://www.egta.com/wp-content/uploads/eu/2026-05-06-Media-Joint-Statement-Digital-Omnibus.pdf).

The Irish Times, asked the institutions to ensure that ‘adequate time and scrutiny’ were given to assessing the legal, technical, and economic implications of the two articles.[53] IAB Europe argued that centralised consent ‘cannot satisfy the GDPR’s strict requirements for consent to be “specific” and “informed”’;[54] EuroCommerce warned that the approach would create ‘digital “consent” gatekeepers’;[55] and Eurochambres observed that concentrating consent management ‘in browsers controlled by large US corporations is not aligned with the EU’s agenda on technological sovereignty and strategic autonomy’ (Eurochambres 2026).

The opposing case deserves equal attention. Consumer and digital rights organisations regard the browser signal as the one element of the package that simplifies life for users, and argue that current banners obtain consent that users would not otherwise give. The European Data Protection Board and the European Data Protection Supervisor ‘strongly support the objective of providing for a regulatory solution to address consent fatigue and the proliferation of cookie banners’, including through automated, machine-readable signals.[56] The disagreement is real, but it is narrower than it appears. Both sides agree that banners have not worked as intended; they differ on how the signal should be designed and who should set its default. A standardised signal that carries a genuine choice in either direction, without a preset default, would address the consumer case without imposing the economic costs documented above.

53 ‘Open letter: Ensuring that the Digital Omnibus truly delivers simplification’, Alliance Digitale, 1 June 2026 (https://www.alliancedigitale.org/wp-content/uploads/2026/06/20260601-Digital-Omnibus-Open-Letter_12065544238817101504.pdf).

54 ‘Getting the Digital Omnibus right: Protecting privacy with simpler rules’, IAB Europe, 26 March 2026 (https://iabeurope.eu/getting-the-digital-omnibus-right-protecting-privacy-with-simpler-rules/).

55 ‘Position paper on the Digital Omnibus’, EuroCommerce, 8 June 2026 (https://www.eurocommerce.eu/2026/06/position-paper-on-the-digital-omnibus/).

56 ‘Digital Omnibus: EDPB and EDPS support simplification and competitiveness while raising key concerns’, European Data Protection Board and European Data Protection Supervisor, press release, 11 February 2026 (https://www.edps.europa.eu/system/files/2026-02/edpb-edps_press_release_joint_opinion_on_digital_omnibus_EN.pdf).

Assessment: weighing the case for the Omnibus

A fair assessment must credit what the package genuinely improves. The single reporting entry point addresses a real and well-documented source of duplication. The codification of Court of Justice case law adds legal certainty, which has value even where it does not change obligations. The adjustment of the AI Act's deadlines, whatever it reveals about the original design, is preferable to enforcing obligations that could not practically be met. And the Observatory's score above the midpoint reflects a package whose direction is broadly liberal. The Council's negotiating mandate, whatever the reasons recorded for it, has also removed the provision that raised the strongest economic objections; whether it stays out now depends on Parliament.

Table 1 applies the simplification test to the package's main provisions, as proposed by the Commission or, for the AI Act, as adopted.

Table 1. The simplification test applied to the main provisions of the Digital Omnibus

Provision	What changes for firms	Effect on compliance hours
Single incident-reporting entry point	The same reports, filed through one portal	Moves; modest cut in duplication
Breach notification: 96 hours, high-risk threshold	Fewer notifications, more time to file	Cuts, modestly
Codification of case law in the GDPR	Clearer rules, same obligations	No change; clearer rules
Narrower definition of personal data; legitimate interest for AI (Articles 4(1) and 88c)	Some pseudonymised data falls outside the GDPR; AI development can rely on legitimate interest	Cuts; contested
New consent exemptions (proposed Article 88a)	Some low-risk uses no longer need consent	Cuts, modestly
Limits on consent requests (proposed Article 88a(4))	Single-click refusal; no new request for at least six months (four in the Council's mandate)	Adds design constraints
Browser signal (proposed Article 88b)	New technical duties for websites, apps, and browsers	Cuts banner costs; adds technical duties; revenue at risk
AI Act high-risk deadlines	The same obligations, applying later	Moves, in time
New AI Act prohibitions	Two new prohibited practices	Adds

Source: author's assessment, based on COM(2025) 837 final (as proposed) and Regulation (EU) 2026/1744 (as adopted).

The difficulty is that the package's achievements are of one kind – coherence – while its promise is of another – cost reduction. Judged as a tidying of the rulebook, it is competent and worthwhile. Judged against the Competitiveness Compass targets it is meant to serve, it leaves the substantive obligations, and therefore the substantive costs, largely where they were, and in one provision it risks adding costs that would fall disproportionately on the smallest market participants, while the Commission's accounting credits it with savings. The State of the Union offers the means to close that gap. A commitment to 'simplicity-by-design' and a pact against gold-plating are the right benchmarks; the test is whether they are applied to the files already on the table, starting with this one, and not only to future proposals.

Policy recommendations

To align the file with the cost-reduction test it is presented as meeting, the co-legislators should consider the following measures.

1. Apply the simplification test to every provision. For each measure, ask whether it reduces the hours a firm spends complying or relocates them. Consolidation that reroutes obligations has value for coherence, but it should not be counted towards Competitiveness Compass burden-reduction targets. The Commission's Regulatory Scrutiny Board and the European Parliament's impact assessment unit are the bodies best placed to apply that test to this file.

2. Count savings once they are adopted, and verify them afterwards. Savings should count towards the €37.5 billion target only when the underlying measures have been adopted, and should then be checked through regulatory audits of the compliance hours actually saved, with revenue and market effects reported alongside administrative costs. A saving that exists only in a proposal is a forecast.

3. Standardise the signal so that no default is presumed. The Commission's text leaves the default unspecified, effectively leaving it to browser vendors unless the standards settle it. If a machine-readable signal is retained or reinstated, the standard should require browsers to ask the user to choose when the browser is first set up. An absent signal should then be read neither as consent nor as a refusal that bars a site from asking, and a positive signal should be capable of constituting valid consent wherever a negative one is honoured as a global refusal (Năsulea 2026). A requirement to choose at installation featured in the 2017 ePrivacy proposal; what was missing then, and what the standardisation request could now supply, is an agreed format that websites can rely on.

4. Broaden exemptions for clearly low-risk processing. Extend the permitted purposes to cover basic advertising measurement, frequency capping, fraud detection, and contextual advertising, so that routine, low-risk activities do not depend on a consent signal that many users may never provide. The Council's mandate moves in this direction, with six consent-free purposes that include measuring the display and performance of contextual advertising; Parliament should follow. This is a direct cost reduction, available within the file as it stands.

5. Require a distributional impact assessment before reinstating proposed Article 88b in any form. The Council's note records the absence of an impact assessment among the matters on which ambassadors gave guidance, and the question of reinstating the provision will now be decided largely in Parliament. The assessment should quantify the effects on independent EU publishers and SMEs, and on the competitive position of large first-party platforms, rather than treating the cost as evenly spread.

6. Introduce proportionality reviews, regulatory audits, and digital sandboxes. As the Observatory panel recommended, a proportionality review asks of each obligation whether its benefit justifies its cost; a regulatory audit measures the compliance hours a rule consumes in practice; a sandbox allows innovations to be tested under supervision before full obligations apply (Nestoras and Mantas 2025). These are the instruments that reduce regulatory weight rather than redistribute it.

7. Verify feasibility before legislating deadlines. Application dates for complex regimes should be set only once the standards, guidance, and authorities that compliance requires are in place, or be made conditional on them, so that correction after adoption, with its costs to early-complying firms and to the credibility of future deadlines, is not needed. In the AI Omnibus, both the Commission's proposal and the adopted text kept fixed long-stop dates that apply whether or not the standards exist; if the standards slip again, the same correction will be needed again. This is what 'simplicity-by-design' should mean in practice.

8. Prefer regulations to directives where uniformity is the goal, and hold member states to the pact against gold-plating. Much of the fragmentation the Omnibus seeks to repair followed from the choice of instrument and from national additions during transposition. The Commission's decision to move the cookie rules from the ePrivacy Directive into the GDPR, a regulation, is consistent with this. The Council's mandate

moves them back into the Directive; whatever the merits of its content, which this briefing welcomes in part, that choice of instrument preserves national divergence, and the co-legislators should weigh it. The member states that signed the Declaration on the Alliance for the Reduction of Bureaucratic Burden in September 2026, which commits them to avoiding gold-plating, should apply it first to the transposition of digital law.

Conclusion

The Digital Omnibus is neither the deregulatory retreat its critics fear nor the burden reduction its presentation suggests. It is a careful reorganisation that improves the coherence of Europe's digital rulebook while leaving its substantive weight largely in place. On incident reporting and the AI timeline, it makes compliance modestly easier to administer. On cookie consent, as the Commission drafted it, it risks the opposite: a browser signal whose default the draft does not set, leaving it in practice to standards or to a handful of vendors, with costs likely to fall most heavily on the smallest European businesses and publishers, while strengthening the platforms the EU's digital agenda seeks to constrain. The Commission's own accounting shows how such a gap can open, since savings are counted before they are made, and the cookie reform is credited with an administrative saving while the revenue it puts at risk goes uncounted. The file is open, the contested provisions are unsettled, and better-designed alternatives are available. The measure of success for a simplification agenda is not how many rules are moved, but how many hours are cut. This file, in its current form, moves many rules, trims some, and eliminates few obligations; the remaining legislative process is the opportunity to change that.

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